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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.            | CONFIRMATION NO.       |
|---|-------------|----------------------|--------------------------------|------------------------|
| 10/692,414  | 10/23/2003  | William Kress Bodin  | AUS920030248US1                | 8489                   |
| 34533 7590 10/15/2007<br>INTERNATIONAL CORP (BLF)<br>c/o BIGGERS & OHANIAN, LLP<br>P.O. BOX 1469<br>AUSTIN, TX 78767-1469 |             |                      | EXAMINER<br>TAYLOR, NICHOLAS R |                        |
|   |             |                      | ART UNIT<br>2141               | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>10/15/2007        | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/692,414

Applicant(s)

BODIN ET AL.

Examiner

Nicholas R. Taylor

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Claims 1-18 have been presented for examination and are rejected.
2. The seven terminal disclaimers filed August 1st, 2007, have been received and approved. The non-statutory rejection under 35 U.S.C. §101 of claims 1-18 is withdrawn. Additionally, the statutory rejection of claims 1-18 is withdrawn.

### ***Response to Arguments***

3. Applicant's arguments filed August 1st, 2007, have been fully considered but they are deemed not persuasive.
4. In the remarks, applicant argued in substance that:

(A) The prior art of Ting does not teach a user metric vector comprising a plurality of disparate user metrics. Applicant's specification discloses that a "user metric" comprises an indication of a user's condition that varies in time, such as blood pressure, heart rate, location, or galvanic response, and not the static biometric components used in Ting.

As to point (A), Ting teaches the creation of a user metric vector comprising a plurality of disparate metrics (paragraph 0033, where Ting creates a metric vector with a variety of biometric readings from the user including fingerprint scanning, retinal

imaging, skin spectrometry, etc.). In response to applicant's argument that the reference fails to show an equivalent "user metric" to applicant's invention, it is noted that the feature upon which applicant relies (i.e., the limitation that the user metric must vary in time) is not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). However, Ting teaches the measurement of either static (e.g., retinal scanning) or time-variable user metrics (e.g., thermal imaging, which similar to blood pressure or heart rate, is time and situation dependent).

(B) The prior art of Ting does not teach creating a user metric space comprising a plurality of metric ranges. Ting does not teach a range of values for a corresponding user metric, but rather a registration of biometric data for authentication. This precludes Ting from teaching whether a user is outside the user metric space or identifying an action in dependence on the metric vector.

As to point (B), Ting teaches creating a user metric vector comprising a plurality of disparate user metrics as described in the response to (A) above. Additionally, Ting teaches obtaining a plurality of metric ranges to create a user metric space (e.g., see the total combination and processing of user metric variables in the analysis present in paragraphs 0035, 0042, and 0043). Ting must collect a "range" of these metric values in order to complete necessary filtering (see paragraph 0046) and statistical modeling (see paragraphs 0042 and 0043).

(C) The prior art of Ting does not teach determining whether the action is allowed and executing the action if the action is allowed. Ting merely discloses using a trusted communications channel to customize a client for an authenticated user or to control what a server downloads to a client.

As to point (C), Ting teaches determining whether a user is outside a metric space, identifying whether an action in dependence on the metric vector is allowed, and if the action is allowed executing the action (Ting, paragraph 0050 and fig. 1, where an action list is provided such as the ones in paragraph 0049 and where user actions are executed only when allowed).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Ting (U.S. PGPub 2002/0174348).

7. Ting teaches a method for administering devices in a network, the method comprising:

creating a user metric vector comprising a plurality of disparate user metrics;

(Ting, paragraphs 0032-0033)

creating a user metric space comprising a plurality of metric ranges; (Ting, paragraphs 0033 and 0035)

determining whether the user metric vector is outside the user metric space;

(Ting, paragraphs 0031-0035, 0042-0043, and 0046-0047)

if the user metric vector is outside a user metric space, (Ting, paragraphs 0042-0043, 0046-0047), and identifying an action in dependence upon the user metric vector; determining whether the action is allowed; and if the action is allowed, executing the action (Ting, paragraph 0050 and fig. 1, where an action list is provided with available actions such as those described in paragraph 0049).

8. As per claims 2, 8, and 14, Ting teaches the system further wherein determining whether the action is allowed comprises comparing the identified action with an allowed action list (Ting, paragraph 0050).

9. As per claims 3, 9, and 15, Ting teaches the system further comprising identifying an allowed replacement action, if the identified action is not allowed (Ting, paragraphs 0048-0051).

10. As per claims 4, 10, and 16, Ting teaches the system further wherein identifying an allowed replacement action comprises comparing the identified action with an allowed action list (Ting, paragraphs 0048-0051).

11. As per claims 5, 11, and 17, Ting teaches the system further comprising executing the allowed replacement action (Ting, paragraphs 0048-0051).

12. As per claims 6, 12, and 18, Ting teaches the system further comprising receiving an allowed action list (Ting, paragraph 0050 and fig. 1, where an action list is provided).

### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Taylor whose telephone number is (571) 272-3889. The examiner can normally be reached on Monday-Friday, 8:00am to 5:30pm, with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NT 10-3-07

Nicholas Taylor  
Examiner  
Art Unit 2141

  
JASON CARDONE  
SUPERVISORY PATENT EXAMINER